**BEFORE THE INDUSTRIAL COMMISSION OF THE STATE OF IDAHO**

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| TRAVIS WILLIAM RUPERT STOWELL,<br><br>Claimant,<br><br>v.<br><br>ELMORE COUNTY,<br><br>Employer,<br><br>and<br><br>STATE INSURANCE FUND,<br><br>Surety,<br>Defendants. | ) | **IC 04-004543**<br><br>**FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION**<br><br>Filed: January 19, 2005 |

## INTRODUCTION

Pursuant to Idaho Code § 72-506, the Idaho Industrial Commission assigned the above-entitled matter to Referee Rinda Just, who conducted a hearing in Boise, Idaho, on October 13, 2004. Mark V. Withers of Nampa represented Claimant. Neil D. McFeeley of Boise represented Defendants. The parties submitted oral and documentary evidence. No post-hearing depositions were taken and the parties submitted post-hearing briefs. The matter came under advisement on November 19, 2004 and is now ready for decision.

## ISSUES

By agreement of the parties at hearing, the issues to be decided are:

1. Whether Claimant suffered an injury arising out of and in the course of his employment; and

2. Whether Claimant is entitled to reasonable and necessary medical care as provided for by Idaho Code § 72-432, and the extent thereof.

## CONTENTIONS OF THE PARTIES

Claimant contends that the injuries he sustained when he jumped off a 35-foot cliff occurred within the course of his employment as a community service worker, and are compensable under the workers' compensation laws.

Defendants argue that Claimant's decision to jump off the 35-foot cliff was outside the course of his employment because there was no causal connection between the circumstances under which the work was to be performed and the injury that Claimant sustained.

## EVIDENCE CONSIDERED

The record in this matter consists of the following:

1. The testimony of Claimant, Marsha Stowell, Mark Stowell, Dillon Workman and Noble "Pat" Crook taken at hearing;

2. Claimant's Exhibits 1 through 7 admitted at hearing; and

3. Defendants' Exhibits 1 through 4 admitted at hearing.

After having considered all the above evidence and the briefs of the parties, the Referee submits the following findings of fact and conclusion of law for review by the Commission.

## FINDINGS OF FACT

1. At the time of the injury, Claimant was 15 years of age. He lived in Mountain Home with his parents and siblings.

2. Claimant had been sentenced to perform 30 hours of community service work for offenses he had committed as a juvenile offender in Elmore County. In Elmore County, non-

violent juvenile offenders perform their community service work under the administration of the Elmore County Juvenile Probation office.

3. On April 15, 2004, Claimant was collecting trash at a county waste site outside the city of Mountain Home as part of his community service requirement. It was not clear from the record whether this was Claimant's second or third day of community service work.

4. Claimant and three or four other male offenders were working under the supervision of Pat Crook, the community service supervisor at the juvenile probation office. There was a man-made hill at the work site that sloped upward and then fell away in a sheer face or cliff. The cliff was about 35 feet high.

5. Mr. Crook testified that he would park the van near where the juveniles were working and would move the van as necessary to assist in loading the filled trash bags into the van. Mr. Cook would stay near or in the van and observe the juveniles as they worked. According to Mr. Crook, the juveniles were gathering trash about 150 yards from the cliff face and had been working for about a quarter of an hour when he had to scold some of them, including Claimant, for throwing trash at each other, poking each other, and otherwise goofing off. Claimant testified that he knew that he and the other juveniles were supposed to be working collecting trash. He testified that it was not uncommon for Mr. Crook to reprimand them for not doing what they were supposed to be doing and order them back to work.

6. After Mr. Crook admonished the boys, he turned to walk back down to the van. He heard the boys "hollering a little bit," so he turned around to see what was going on. Tr., p. 66. He observed Claimant walking away from the other boys, so he started back up the hill to see what was going on. Mr. Crook saw Claimant standing at the top of the cliff looking down. Claimant turned and walked back toward the other boys, and Mr. Crook turned and started back

to the van to move it closer to where the juveniles were working. Before he reached the van, he heard the juveniles start yelling, so he turned again and saw Claimant headed toward the cliff at a dead run. Mr. Crook shouted to Claimant three times without effect. Claimant kept on going and then jumped off the cliff.

7. Claimant and Mr. Workman testified that some of the juveniles had been talking about another boy who had allegedly jumped off the cliff and had not been hurt, daring Claimant to do the same.

8. Mr. Crook drove the van to where Claimant had landed and found Claimant walking, talking, and bleeding from his nose. Claimant stated he felt fine. Mr. Crook took Claimant to the restroom to clean up and then Claimant returned to work. Shortly thereafter, Mr. Crook observed that Claimant's face was swelling, so he loaded up the boys and took Claimant to the hospital where he was treated.

9. Claimant testified that he did not know why he had jumped off the cliff, telling Mr. Crook, "Boy, that was stupid. I will never do that again." At the hospital, the treating physician noted that Claimant "spontaneously decided that he would jump off the cliff. In talking to the patient about his rationale for jumping off the cliff he states [sic] 'Well, I heard a couple of other guys did it, so I thought I'd do it, too.' The patient states that he jumped off the cliff with other work release coworkers and correction officers watching." Claimant's Ex. 2. At hearing, Claimant again stated he did not know why he jumped off the cliff, and that it was "just kind of weird. I kind of do stupid stuff like that." Tr., p. 24.

10. In his hearing testimony, Claimant recognized that jumping off the cliff was not part of his job, that Mr. Crook had not directed him to jump, and that there was no trash at the top of the hill or at the bottom of the cliff that he had intended to pick up. Claimant also

acknowledged at hearing that he knew that he wasn't supposed to be playing around, goofing off, or jumping off cliffs and that he would have gotten in trouble had Mr. Crook been aware of what he was doing and been able to stop him.

## DISCUSSION AND FURTHER FINDINGS

11. "A claimant in a worker's [sic] compensation case has the burden of proving that he is entitled to benefits. The claimant must prove not only that he was injured, but also that his injury was the result of an accident arising out of and in the course of his employment." *Neufeld v. Browning Ferris Industries*, 109 Idaho 899, 902, 712 P.2d 500, 503 (1985).[1] In order to prevail in this case, Claimant must prove by a preponderance of the evidence that his injuries arose out of and in the course of his employment. *Basin Land Irr. Co. v Hat Butte Canal Co.*, 114 Idaho 121, 124, 754 P. 2d 434, 437 (1988); *Reinstein v. McGregor Land and Livestock Co.*, 126 Idaho 156, 158, 879 P. 2d 1089, 1091 (1994). Claimant has failed to carry his burden of proof that his injuries arose out of and in the course of his community service work.

12. The question of whether an injury arose out of and in the course of employment is a question of fact to be determined by the Industrial Commission. *Kessler v. Payette County*, 129 Idaho 855, 934 P. 2d 28 (1997). The Idaho Supreme Court uses a two-pronged test to determine whether injuries arose "out of" and "in the course of" employment:

> The words "out of" have been held to refer to the origin and cause of the accident and the words "in the course of" refer to the time, place, and the circumstances under which the accident occurred.

*Dinius v. Loving Care and More, Inc.*, 133 Idaho 572, 574, 990 P.2d 738, 740 (1999).

> An injury is deemed to be in the course of employment when it takes place while the worker is doing the duty which he is employed to perform. *Kiger V. Idaho Corp.*, 85 Idaho 424, 430, 380 P.2d 208, 210 (1963). The injury is considered to

[1] The Referee notes that the issue of whether Claimant's injuries resulted from an *accident* was not before her in this proceeding.

> arise out of the employment when a causal connection is found to exist between the circumstances under which the work must be performed and the injury of which the claimant complains. *Kessler, supra,* 129 Idaho at 855, 934 P.2d at 28.

*Id.* at 757.

13. On the facts before her, the Referee cannot find that Claimant has met either prong of the test. Claimant cannot meet the first prong because he was not engaged in the duty he was employed to perform when he incurred his injuries. In fact, had Claimant been doing what he was supposed to be doing at the time, he would not have been anywhere near the cliff. Claimant's act of jumping was a personal, if inexplicable, act, of no conceivable benefit to his Employer.

Claimant cannot meet the second prong because he has failed to show a causal connection between the circumstances under which he was working and the injury he sustained. Claimant didn't fracture his facial bones bending over to pick up trash; he didn't slip and fall ascending or descending the slope to get to and from the work area; he didn't trip over a piece of trash and fall; the van in which he was required to ride was not involved in an accident that caused his injuries. Rather, Claimant, intentionally and of his own volition, left the area where he was supposed to be, left off doing what he was supposed to be doing, and for reasons that even he cannot explain, jumped off a cliff.

Throughout the course of the hearing, and again in post-hearing briefing, Claimant returns to several themes that he asserts make his injuries compensable. Claimant argues that joking around and horseplay occur in any work environment, and are particularly prevalent in a group of juvenile offenders, so Claimant's actions should be considered to have arisen out of and in the course of his employment. He further notes that breaking a rule while working does not preclude coverage under the workers' compensation statutes. The Referee is not persuaded that

jumping off a cliff can be considered akin to poking one another and throwing trash at one another. Further, Claimant wasn't breaking a rule while working. He wasn't working. He was in no way engaged in the business of community service trash collection once he stopped collecting trash, walked to the cliff, looked over it, walked back to the other individuals, then hit the cliff at a dead run and jumped.

A second theme which ran throughout the hearing and the briefing was that Claimant's injuries should be compensable because Employer knew it was dealing with juveniles who had committed either criminal or status offenses, thus evidencing a propensity to make bad judgments. Therefore, Claimant argues, Employer owed a higher duty of care of supervision, and failing to provide adequate supervision, Employer should be expected to pay the consequences. Such arguments sound in tort and have no place in a workers' compensation proceeding. The amount and quality of supervision has no relevance to whether or not Claimant was acting in the course of his employment.

A related argument is that Employer should be held responsible under workers' compensation provisions because the juveniles who dared Claimant to jump told him that the other person who had jumped had not been hurt. Claimant stated that if he had known he would get hurt, he wouldn't have taken the dare. To illuminate the absurdity of such an argument, consider an analogous situation. If the other juveniles had dared Claimant to eat rat poison and told him that he wouldn't get hurt, would he be reasonable to act on their assurances? Any child of an age to be allowed at large should know that jumping from a 35-foot cliff or eating rat poison is likely to cause injury, regardless of what several other juvenile offenders might tell him.

## CONCLUSION OF LAW

1. Claimant's injuries did not arise out of and in the course of his employment and are, therefore, not compensable. All other issues are moot.

## RECOMMENDATION

The Referee recommends that the Commission adopt the foregoing findings of fact and conclusion of law and issue an appropriate final order.

DATED this 7 day of January, 2005.

INDUSTRIAL COMMISSION

/s/_____
Rinda Just, Referee

ATTEST:

/s/_____
Assistant Commission Secretary

## CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of January, 2005 a true and correct copy of **FINDINGS OF FACT, CONCLUSION OF LAW, AND RECOMMENDATION** was served by regular United States mail upon:

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